

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEPHEN M. TURNER,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 3:16-cv-05381-KLS

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of defendant's denial of his applications for disability insurance and supplemental security income (SSI) benefits. The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court finds that defendant's decision to deny benefits should be reversed, and that this matter should be remanded for further administrative proceedings.

FACTUAL AND PROCEDURAL HISTORY

On June 25, 2013, plaintiff filed an application for disability insurance benefits and another one for SSI benefits, alleging in both applications that he became disabled beginning May 1, 2013. Dkt. 9, Administrative Record (AR), 21. Both applications were denied on initial administrative review and on reconsideration. *Id.* At a hearing held before an Administrative Law Judge (ALJ), plaintiff appeared and testified, as did a vocational expert. AR 41-78.

In a written decision dated November 24, 2014, the ALJ found that plaintiff could

perform other jobs existing in significant numbers in the national economy, and therefore that he was noted disabled. AR 21-35. On April 27, 2016, the Appeals Council denied plaintiff's request for review of that decision, making it the Commissioner's final decision, which plaintiff then appealed in a complaint filed with this Court on May 20, 2016. AR 1; Dkt. 1-3; 20 C.F.R. § 404.981, § 416.1481.

Plaintiff seeks reversal of the ALJ's decision and remand for further administrative proceedings, arguing the ALJ erred:

- (1) in finding plaintiff's pituitary cyst and resulting testosterone and growth hormone deficits were not severe impairments;
- (2) in rejecting the opinions of Jared Hellings, Psy.D., and Howard Platter, M.D.;
- (3) in discounting plaintiff's credibility; and
- (4) in finding plaintiff could perform other jobs existing in significant numbers in the national economy.

For the reasons set forth below, the Court agrees the ALJ erred in rejecting the opinion of Dr. Platter and thus in finding plaintiff could perform other jobs. The Court, therefore, finds remand for further administrative proceedings is warranted.

DISCUSSION

The Commissioner's determination that a claimant is not disabled must be upheld if the "proper legal standards" have been applied, and the "substantial evidence in the record as a whole supports" that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986); *see also Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991). "A decision supported by substantial evidence nevertheless will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision." *Carr*, 772 F.Supp. at 525 (citing *Browner v. Sec'y of*

1 *Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987)). Substantial evidence is “such
 2 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
 3 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also Batson*, 359 F.3d at
 4 1193.

5 The Commissioner’s findings will be upheld “if supported by inferences reasonably
 6 drawn from the record.” *Batson*, 359 F.3d at 1193. Substantial evidence requires the Court to
 7 determine whether the Commissioner’s determination is “supported by more than a scintilla of
 8 evidence, although less than a preponderance of the evidence is required.” *Sorenson v.*
 9 *Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence admits of more than one
 10 rational interpretation,” that decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th
 11 Cir. 1984). That is, “[w]here there is conflicting evidence sufficient to support either outcome,”
 12 the Court “must affirm the decision actually made.” *Allen*, 749 F.2d at 579 (quoting *Rhinehart v.*
 13 *Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).

16 I. The ALJ’s Evaluation of Dr. Platter’s Opinion

17 The ALJ is responsible for determining credibility and resolving ambiguities and
 18 conflicts in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where
 19 the evidence is inconclusive, “questions of credibility and resolution of conflicts are functions
 20 solely of the [ALJ].” *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such situations,
 21 “the ALJ’s conclusion must be upheld.” *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d
 22 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the evidence “are material (or
 23 are in fact inconsistencies at all) and whether certain factors are relevant to discount” medical
 24 opinions “falls within this responsibility.” *Id.* at 603.

26 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings

1 “must be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 725. The ALJ can do this
2 “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
3 stating his interpretation thereof, and making findings.” *Id.* The ALJ also may draw inferences
4 “logically flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court itself may
5 draw “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881
6 F.2d 747, 755, (9th Cir. 1989).

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8 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted
9 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
10 1996). Even when a treating or examining physician’s opinion is contradicted, that opinion “can
11 only be rejected for specific and legitimate reasons that are supported by substantial evidence in
12 the record.” *Id.* at 830-31. However, the ALJ “need not discuss *all* evidence presented” to him or
13 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation
14 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence
15 has been rejected.” *Id.*; *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*
16 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

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18 In general, more weight is given to a treating physician’s opinion than to the opinions of
19 those who do not treat the claimant. *See Lester*, 81 F.3d at 830. On the other hand, an ALJ need
20 not accept the opinion of a treating physician, “if that opinion is brief, conclusory, and
21 inadequately supported by clinical findings” or “by the record as a whole.” *Batson v. Comm’r of*
22 *Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *see also Thomas v. Barnhart*, 278 F.3d
23 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). An
24 examining physician’s opinion is “entitled to greater weight than the opinion of a nonexamining
25 physician.” *Lester*, 81 F.3d at 830-31. A non-examining physician’s opinion may constitute
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1 substantial evidence if “it is consistent with other independent evidence in the record.” *Id.* at
2 830-31; *Tonapetyan*, 242 F.3d at 1149.

3 With respect to the opinion evidence from Dr. Platter, the ALJ found:

4 In December 2013, state agency medical consultant Dr. Platter opined that the
5 claimant could lift and carry ten pounds frequently and twenty pounds
6 occasionally. He opined that the claimant could stand and/or walk for six
7 hours in an eight-hour workday, and that he could sit for six hours in the same
8 period. He opined that the claimant needed to alternate between sitting and
9 standing due to his back impairment. He opined that the claimant had a
10 limited ability to reach overhead with his right upper extremity due to mild
11 supraspinatus tendinosis. He opined that the claimant had an unlimited ability
12 to handle and finger. He opined that the claimant could frequently crawl,
13 kneel, balance, or climb ramps and stairs. He opined that the claimant could
14 occasionally crouch, stoop, or climb ladders, rope, and scaffolding. He opined
15 that the claimant should avoid concentrated exposure to vibration and
16 workplace hazards.

17 I give significant weight to Dr. Platter’s opinion, which is consistent with the
18 claimant’s longitudinal examination findings and minimal degree of medical
19 treatment since his alleged onset date. However, I find no reasonable basis to
20 find that the claimant needs to alternate between sitting and standing in order
21 to persist with light exertional labor. Dr. Platter opined that the claimant
22 needed to alternate frequently due to symptoms regarding his spinal
23 impairment. However, the claimant’s work history and medical history
24 indicate that he was able to maintain fulltime labor as a teller . . . despite his
25 longstanding spinal impairment. The claimant’s spinal imaging, as already
26 discussed in this decision, has only found mild degenerative changes.

AR 32 (internal citations omitted).

Plaintiff argues the ALJ’s reasons for rejecting Dr. Platter’s opinion are not valid. The
Court agrees. First, as plaintiff points out, the last time he worked as a teller was in 2008. AR 61.
Plaintiff testified, furthermore, that even at that time he could not “stand for long periods of time
without taking breaks,” and that sometimes his legs gave out. AR 62. Second, the ALJ offers no
explanation as to how he came to the conclusion that plaintiff’s medical history indicates he was
able to maintain fulltime labor as a teller. Third, and finally, the ALJ does not adequately support
his reliance on the mild degenerative changes found on spinal imaging, particularly as Dr. Platter

1 himself appears to have relied on that imaging in forming his opinion. AR 174, 176; *Gonzalez*
2 *Perez v. Sec’y of Health and Human Servs.*, 812 F.2d 747, 749 (1st Cir. 1987) (an ALJ may not
3 substitute his own opinion for the opinion of a physician); *McBrayer v. Sec’y of Health and*
4 *Human Servs.*, 712 F.2d 795, 799 (2nd Cir. 1983) (an ALJ cannot arbitrarily substitute his own
5 judgment for a competent medical opinion); *Whitney v. Schweiker*, 695 F.2d 784, 788 (7th Cir.
6 1982) (an ALJ should avoid commenting on the meaning of objective medical findings without
7 supporting medical expert testimony).
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9 II. The ALJ’s Step Five Determination

10 The Commissioner employs a five-step “sequential evaluation process” to determine
11 whether a claimant is disabled. 20 C.F.R. § 404.1520, § 416.920. If the claimant is found
12 disabled or not disabled at any particular step thereof, the disability determination is made at that
13 step, and the sequential evaluation process ends. *See id.* A claimant’s residual functional capacity
14 (RFC) assessment is used at step four of the process to determine whether he or she can do his or
15 her past relevant work, and at step five to determine whether he or she can do other work. SSR
16 96-8p, 1996 WL 374184 *2. It is what the claimant “can still do despite his or her limitations.”
17 *Id.*
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19 A claimant’s RFC is the maximum amount of work the claimant is able to perform based
20 on all of the relevant evidence in the record. *Id.* However, an inability to work must result from
21 the claimant’s “physical or mental impairment(s).” *Id.* Thus, the ALJ must consider only those
22 limitations and restrictions “attributable to medically determinable impairments.” *Id.* In assessing
23 a claimant’s RFC, the ALJ also is required to discuss why the claimant’s “symptom-related
24 functional limitations and restrictions can or cannot reasonably be accepted as consistent with the
25 medical or other evidence.” *Id.* at *7.
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1 The ALJ found plaintiff had the physical RFC to perform:

2 **light work . . . except he can occasionally reach overhead with his right**
3 **upper extremity. He can frequently handle and finger with his right**
4 **upper extremity. He cannot crawl or climb ladder [sic], rope [sic],**
5 **scaffolding, ramps, or stairs. He can occasionally balance, stoop, kneel, or**
6 **crouch. He should avoid concentrated exposure to vibration and hazards.**

7 AR 28 (emphasis in the original). But because as discussed above the ALJ failed to provide valid
8 reasons for rejecting Dr. Platter's opinion, the ALJ's RFC assessment cannot be said to
9 completely and accurately describe all of plaintiff's functional limitations.

10 If a claimant cannot perform his or her past relevant work, at step five of the sequential
11 disability evaluation process the ALJ must show there are a significant number of jobs in the
12 national economy the claimant is able to do. *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir.
13 1999); 20 C.F.R. § 416.920(d), (e). The ALJ can do this through the testimony of a vocational
14 expert. *Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2000); *Tackett*, 180 F.3d at 1100-1101.
15 An ALJ's step five determination will be upheld if the weight of the medical evidence supports
16 the hypothetical posed to the vocational expert. *Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir.
17 1987); *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's
18 testimony therefore must be reliable in light of the medical evidence to qualify as substantial
19 evidence. *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ's
20 description of the claimant's functional limitations "must be accurate, detailed, and supported by
21 the medical record." *Id.* (citations omitted).

22 Here, the ALJ found plaintiff could perform other jobs existing in significant numbers in
23 the national economy, based on the vocational expert's testimony offered at the hearing in
24 response to a hypothetical question concerning an individual with the same age, education, work
25 experience and RFC as plaintiff. AR 34-35. But because as discussed above the ALJ erred in
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1 assessing plaintiff's RFC, the hypothetical question the ALJ posed – and thus the vocational
 2 expert's testimony and the ALJ's reliance on that testimony – also cannot be said to be supported
 3 by substantial evidence or free of error.

4 III. Remand for Further Administrative Proceedings

5 The Court may remand this case “either for additional evidence and findings or to award
 6 benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the Court
 7 reverses an ALJ's decision, “the proper course, except in rare circumstances, is to remand to the
 8 agency for additional investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th
 9 Cir. 2004) (citations omitted). Thus, it is “the unusual case in which it is clear from the record
 10 that the claimant is unable to perform gainful employment in the national economy,” that
 11 “remand for an immediate award of benefits is appropriate.” *Id.*

12 Benefits may be awarded where “the record has been fully developed” and “further
 13 administrative proceedings would serve no useful purpose.” *Smolen*, 80 F.3d at 1292; *Holohan v.*
 14 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:

17 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
 18 claimant's] evidence, (2) there are no outstanding issues that must be resolved
 19 before a determination of disability can be made, and (3) it is clear from the
 20 record that the ALJ would be required to find the claimant disabled were such
 21 evidence credited.

22 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

23 Because issues remain in regard to the medical evidence in the record, plaintiff's RFC, and his
 24 ability to perform other jobs existing in significant numbers in the national economy, remand for
 25 further consideration of those issues is warranted.

26 CONCLUSION

Based on the foregoing discussion, the Court finds the ALJ improperly determined

1 plaintiff to be not disabled. Defendant's decision to deny benefits therefore is REVERSED and
2 this matter is REMANDED for further administrative proceedings.

3 DATED this 12th day of January, 2017.

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7 Karen L. Strombom
8 United States Magistrate Judge
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